



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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MAILED

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Washington, DC 20044-4300

MAY - 2 2003

OFFICE OF THE DIRECTOR  
TC 3600

Paper No. 6

In re application of  
Takao Kojima et al.  
Application No. 09/922,917  
Filed: August 7, 2001  
For: PEDAL DEVICE FOR A VEHICLE  
AND AUTOBILE USING THE SAME

DECISION ON PETITION  
TO RESET A PERIOD  
FOR REPLY

This is in reply to the Petition to Reset a Period for Reply Due to Late Receipt of an Office action, received in the Patent and Trademark Office on March 19, 2003.

The petition is **DISMISSED**.

Applicant argues that the Office action having a mail date of December 2, 2002 arrived in an envelope bearing a postmark with a [March?] 28, 2003 date. Applicant asks that the period for response be reset to reflect the postmark date of the envelope containing the Office action.

Such a petition may be granted if the following criteria are met: (A) the petition is filed within 2 weeks of the date of receipt of the USPTO action at the correspondence address, (B) the reply period was for payment of the issue fee, or the reply period set was 1 month or 30 days, and (C) the petition includes (1) evidence showing receipt (e.g., copy of the USPTO action having the date of receipt of the action at the correspondence address stamped thereon, etc.), (2) a copy of the envelope which contained the USPTO action showing the postmark date, and (3) a statement setting forth the date of receipt of the action at the correspondence address and stating that the action was received in the postmarked envelope.

The showings outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been delayed after receipt rather than a conclusion that the Office action was delayed in the mail or in the Office.

A review of the file record reveals that an Office action was mailed to the address of record on December 2, 2002. The petition alleges that that Office action was not received in the office of the attorney until on or about April 2, 2003. The petition also provides a copy of the envelope in which the Office Action was received, containing a postmark showing an actual mailing date of [March?] 28, 2003.

The petition lacks the evidence required in Item (C)(1), above. Specifically, the copy of the USPTO action does not have the date of receipt of the action at the correspondence address stamped thereon. A further review of the file record reveals that the correspondence address listed in the original declaration was to Crowell & Moring LLP at Suite 700, 1200 G Street, N.W., Washington, DC 20005. This was the correspondence address of record. A change of correspondence address was filed on March 27, 2003 which directed further communications from the Office to be sent to Crowell & Moring, LLP at Intellectual Property Group, P.O. Box 14300, Washington, DC 20044-4300. Because the change in correspondence address was not filed with the Office prior to the December 2, 2002 communication, the Office action sent to the applicant from the Office was properly sent to the address of record; the 1200 G Street, N.W. address.

It is further noticed that the correspondence address on the copy of the first sheet of the Office action submitted as evidence is to Crowell & Moring, LLP at P.O. 14300, Washington, D.C. 20044-4300. However, the file copy of the Office action indicates that it was sent to the 1200 G Street address. While MPEP 710.06 does give an applicant the ability to petition to show that a communication from the Patent Office was received late, this is predicated on the fact that the attorney was at the correspondence address to receive the communication. Thus, applicant needs to show late receipt of the communication at the 1200 G street address, the address to which the Office action was mailed.

The time period for response to the Office action of December 2, 2002 continues to run 1 month from that date. The application is being returned to the Central Files holding area of TC 3600 to await applicant's response to that Office action.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted.

  
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KJD/tpl: 5/1/03